Supreme Court, U.S.
FILED
APR 7 1971
E. ROBERT SEAVER, CLERK

No. 1440

# In the Supreme Court of the United States

OCTOBER TERM, 1970

---

MELVIN WILSON, PETITIONER

*v.*

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

---

## BRIEF FOR THE UNITED STATES IN OPPOSITION

---

ERWIN N. GRISWOLD,
*Solicitor General,*

WILL WILSON,
*Assistant Attorney General,*

BEATRICE ROSENBERG,
*Attorney,*
*Department of Justice,*
*Washington, D.C. 20530.*

# In the Supreme Court of the United States

OCTOBER TERM, 1970

---

No. 1440

MELVIN WILSON, PETITIONER

*v.*

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

---

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

---

## OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-6) is not yet reported.

## JURISDICTION

The judgment of the court of appeals was entered on February 8, 1971. The petition for a writ of certiorari was filed on March 5, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether 7 U.S.C. 2023, which imposes criminal

penalties on anyone who knowingly uses, transfers, acquires or possesses food stamp coupons in any manner not authorized by the Food Stamp Act or regulations issued pursuant to it, effectively makes it a crime for one retail food store owner to engage in unauthorized discounting of such coupons to another retail food store owner.

2. Whether the indictment was sufficient.

## STATEMENT

After a nonjury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on one count charging that he did knowingly use, transfer, acquire and possess food stamp coupons in an unauthorized manner in violation of 7 U.S.C. 2023. He was sentenced to three years' imprisonment and fined $5,000 and costs. Execution of the sentence was suspended and petitioner was placed on probation for three years, the first 90 days to be served in a jail-type institution.

The evidence at trial showed that petitioner owned a retail grocery store authorized to participate in the federal Food Stamp Program (Tr. 108-109). In July 1968, petitioner offered to sell to the owners of the Select Grocery Store, who were Chicago police officers, $1,000 worth of food stamp coupons for $950 (Tr. 21-22, 32-33, 51-52). Petitioner stated that he knew the owners were police officers, "but everybody likes to make a little money" (Tr. 24, 52). One of the officers reported the offer to the food stamp office the next day (Tr. 24, 38-39), and arrangements were made with fed-

eral agents of the Treasury and Agriculture Departments for the officers to make a purchase of food stamp coupons from petitioner (Tr. 39-49, 65-68, 80-82, 90 97).

Petitioner subsequently returned to the Select Grocery Store with $1,650 worth of food stamp coupons (Tr. 26, 55) which he sold to the officers for $1,500 (Tr. 26, 55). In reply to a question concerning future purchases, petitioner stated that his was a "big operation" and that he had about $30,000 worth of food stamp coupons (Tr. 57, 58). He was then arrested by the officers (Tr. 57).

The coupons transferred were two-dollar food stamps not enclosed in the appropriate covers and not endorsed as required for redemption (Tr. 26, 27). Petitioner did not present a certificate of redemption (Tr. 27). The officers, although authorized retailers under the Food Stamp Program, were not authorized wholesalers (Tr. 27). Petitioner had been previously informed by the Agriculture Department of the proper method of redeeming food stamp coupons (Tr. 16, 17, 114).

## Argument

Petitioner contends that he merely discounted the food stamp coupons and that such a lateral transfer is not specifically prohibited by the statutes and regulations. The applicable statute, however, 7 U.S.C. 2023, provides in pertinent part:

> (b) Whoever knowingly uses, *transfers,* acquires, or possesses coupons *in any manner not authorized by this Chapter or the regulations issued pursuant to this Chapter* shall, if such coupons are of the

> value of $100 or more, be guilty of a felony and shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both * * *. [Emphasis added.]

No statute or regulation authorizes the lateral transfer of food stamp coupons by discounting. The applicable regulation, 7 C.F.R. 1602.4 (Pet. App. 19), provides for the redemption of food stamp coupons by authorized retailers by presentment to an authorized wholesale food concern or a commercial bank. No other means of transfer is authorized.

*United States* v. *Resnick,* 299 U.S. 207, on which petitioner relies, is inapposite. That case involved a statute regulating the manufacture and sale of fruit and vegetable hampers of nine specific sizes and providing a criminal fine for the manufacture or sale of hampers that did not comply with the statute. This Court held that the statute did not apply to the manufacture or sale of hampers of a size not mentioned. The decision was premised on the rule that, since in the absence of governmental regulations the "making and selling of containers is untrammeled, failure expressly to permit is not to prohibit." 299 U.S. at 210. The fundamental distinction which petitioner ignores is that government-issued food stamp coupons, unlike fruit and vegetable containers, do not circulate freely absent government regulation. The very act which created the food stamp coupons explicitly states that specific statutory or regulatory authorization is required for any use of the coupons. 7 U.S.C. 2023.

2. Petitioner argues that the indictment is defective

in that it does not specifically refer to 7 C.F.R. 1602.4, the regulation providing for the redemption of food stamp coupons, but only refers to 7 C.F.R. 1600 *et seq.* The general reference to the regulations fully complied with the citation requirements of Rule 7(c), F.R. Crim. P. Furthermore, petitioner does not claim that he was misled to his prejudice by the citations in the indictment. Any error in citation which does not prejudice the defendant cannot be grounds for reversal of conviction. Rule 7(c), F.R. Crim. P.

## Conclusion

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

Erwin N. Griswold,
*Solicitor General.*

Will Wilson,
*Assistant Attorney General.*

Beatrice Rosenberg,
*Attorney.*

APRIL 1971.

☆ U.S. Government Printing Office: 1971—421-215/556